3-5-2014

Order on Motion to Enforce Settlement and Motion to Withdraw as Counsel (Davis Lee Companies, LLC)

Alice D. Bonner
Fulton County Superior Court, Judge

COPY

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

Davis Lee Companies, LLC, Plaintiff,	)	
v.	)	Civil Action No. 2012-CV-221751
Steven N. Aninye, Defendant.	)	

ORDER ON MOTION TO ENFORCE SETTLEMENT AND MOTION TO WITHDRAW AS COUNSEL

Before the Court is Plaintiff's Motion to Enforce the Settlement Between Davis Lee Companies, LLC ("DLC") and Steven N. Aninye (the "Motion to Enforce") and Motion to Withdraw as Counsel ("Motion to Withdraw") filed by Richard Kaye, William Leonard, Rachael Zichella, and Taylor English Duma, LLP (collectively, "Defense Counsel"). The Court held an evidentiary hearing on February 5, 2014, at which time counsel for DLC and counsel for Aninye presented arguments in further support of their clients' respective positions regarding the Motion to Enforce and the Motion to Withdraw. After reviewing all of the foregoing, hearing arguments of counsel, and taking testimony from Aninye, the Court hereby makes the following findings of fact and conclusions of law and, for the reasons set forth below, **GRANTS** both Plaintiffs' Motion to Enforce the Settlement Agreement and Defense Counsel's Motion to Withdraw.

On September 20, 2012, Plaintiff Davis Lee Companies, LLC ("DLC") brought suit against Steven N. Aninye seeking relief for Aninye's alleged breaches of fiduciary duty, breach of contract, breaches of covenants of good faith and fair dealing, and fraud in

relation to Aninye's management of Zorah, LLC. On November 5, 2012, Aninye answered the Complaint and brought counterclaims. On December 14, 2012, Aninye dismissed his counterclaims without prejudice.

On October 11, 2013, Defense Counsel filed its Motion to Withdraw. DLC opposed this request and submitted the Motion to Enforce on October 31, 2013. According to DLC, the parties: (1) agreed to settle the case; (2) drafted documents memorializing the terms of that settlement; and (3) exchanged versions of the settlement documents to which both sides agreed. In October 2013, however, DLC alleges that Aninye refused to execute one of the settlement documents, essentially undermining the entire settlement.

I. FINDINGS OF FACT

DLC sued Aninye charging him with malfeasance as manager of Zorah, LLC ("Zorah"), a Georgia limited liability company for which defendant Aninye is the sole Manager and DLC was a member. DLC sought relief for alleged breaches of fiduciary duty, breach of contract, breaches of covenants of good faith and fair dealing, and fraud in relation to Aninye's management of Zorah.

In January 2013, the parties began discussing settlement. Negotiations continued in the ensuing months, during which the parties, by joint stipulation, postponed the deadlines set forth in the Scheduling Order. Throughout this period a framework for settlement evolved through which: (1) Zorah would re-purchase $204,000.00 of DLC's investment via a Note; (2) Aninye would guarantee the Note; (3) Aninye and Zorah would release DLC from any and all claims; (4) DLC would release Aninye and Zorah from any and all claims via a release which DLC's counsel would hold in escrow until Zorah fulfilled

its payment obligations pursuant to the Note; (5) DLC and its representatives would sign a confidentiality agreement; and (6) Zorah would revise its Operating Agreement.

In late July 2013, Aninye's counsel, Richard A. Kaye, confirmed the structure of the payments to DLC and DLC's release of Aninye, stating that he would "draft a redemption agreement for [DLC's] review (guaranteed by Mr. Aninye of course and following the spirit of our discussions)." (Mot. to Enforce, Ex. 4.) A few days later, on July 30, 2013, Kaye represented to the Court that the parties were "in process of finalizing settlement documents" and hopefully would not need a hearing on dispositive motions in September. (Mot. to Enforce, Ex. 4.)

The parties memorialized their negotiated settlement in six interrelated documents: (1) Resolution Agreement (2) Resolution Agreement Note; (3) Resolution Agreement Note Guaranty; (4) Confidentiality Agreement; (5) Revised Zorah, LLC Operating Agreement; and (6) Release of Zorah and Aninye. By September 11, 2013, the parties had agreed to all of the settlement documents.

On September 24, 2013, Kaye represented that Aninye was, at that time, in Mexico, where he was unable to execute the documents. Kaye, however, represented that Aninye would "be back later this week to sign documents." (Mot. to Enforce, Ex. 10.)

On October 3, 2013, Kaye contacted DLC's counsel and stated that Aninye agreed to all of the documents except the Resolution Agreement Note Guaranty (the "Guaranty"). Notably, the parties had finalized negotiations on the Guaranty two months earlier on August 1, 2013.

II. CONCLUSIONS OF LAW

Under Georgia law, a "settlement agreement must meet the same requirements of formation and enforceability as other contracts. Only when a meeting of the minds exists will an agreement be formed." Johnson v. DeKalb Cnty., 314 Ga. App. 790, 793 (2012); see also Ruskin v. AAF-McQuay, Inc., 284 Ga. App. 49, 49-50 (2007). However, "the law also favors compromise, and when parties have entered into a definite, certain and unambiguous agreement to settle, it should be enforced." Id. Thus, a settlement agreement is "enforceable when its terms are 'expressed in language sufficiently plain and explicit to convey what the parties agreed upon.'" See DeRossett Enters., Inc. v. Gen. Elec. Capital Corp., 275 Ga. App. 728, 729 (2005) (quoting Mon Ami Int'l v. Gale, 264 Ga. App. 739, 742 (2003)).

To satisfy this requirement, there does not need to be an agreement signed by all the parties: "[l]etters of documents prepared by attorneys which memorialize the terms of the agreement reached will suffice." Brumbelow v. N. Propane Gas Co., 251 Ga. 674, 676 (1983). For example, the Court of Appeals has held that, in the absence of executed documents, letters confirming settlements sufficiently memorialize the terms of the parties agreement. See, e.g., Paul Dean Corp. v. Kilgore, 252 Ga. App. 587, 591 (2001), Herring v. Dunning, 213 Ga. App. 695, 699, (1994); Potomac Leasing Co., Inc. v. First Nat'l Bank of Atlanta, 180 Ga. App. 255, 258 (1986) ("[C]orrespondence exchanged between counsel for plaintiff and the bank demonstrates the existence of a binding settlement contract"). Exchanges of e-mails can show that parties reached a settlement and memorialized their agreement. Johnson, 314 Ga. App. at 794 (noting

that defendants' effort to "to execute a formal written settlement" did not change the fact that the parties entered into "a mutual binding agreement").

For this reason, the Court of Appeals has held that

> An agreement to make and execute a certain written agreement, the terms of which are mutually understood and agreed on, is in all respects as valid and obligatory as the written contract itself would be if executed. If therefore it appears that the minds of the parties have met, that a proposition for a contract has been made by one party and accepted by the other, that the terms of this contract are in all respects definitely understood and agreed on, and that a part of the mutual understanding is that a written contract embodying these terms shall be drawn and executed by the respective parties, this is an obligatory agreement.

Mason v. Rabun Waste, Inc., 174 Ga. App. 462-63 (1985) (quoting Hart v. Doss Rubber &c. Co., 32 Ga. App. 314, 317 (1924)). In Mason, appellants admitted their attorney had "accepted an oral offer of settlement made by appellees' attorney" and did not dispute the terms of that offer, "including the terms of the various documents the parties agreed to execute under the settlement." Id. at 463. Nevertheless, appellants' challenged "the finality of the agreement because of their attorney's statement that he did not think the settlement would be final until all terms had been reduced to writing." Id. The Court of Appeals rejected this argument and held that the attorney's "uncommunicated intent that the final agreement would be in writing does not create a question of fact regarding the terms of the contract to which the parties mutually agreed." Id.

That Aninye now refuses to execute the documents does not render the settlement unenforceable either. The Georgia Supreme Court, in Ray v. Ray, 263 Ga. 719 (1994), concluded that a motion to enforce was properly granted even though the appellant had not signed the agreement because the parties had exchanged

documentation, including "the final revisions discussed between them." Id.; see also Stevens v. McCarty, 198 Ga. App. 412, 413 (1991) (holding that a settlement letter "was clear and unambiguous" and "conclud[ing] that appellant's misunderstanding about the meaning of that language provides no basis for refusing to enforce an agreement which his attorney had authority to enter into"); Penny Profit Foods, Inc. v. McMullen, 214 Ga. App. 740, 742 (1994) (holding the settlement agreement was enforceable, and the client was "bound by its terms even in the absence of a writing or detrimental reliance on the part of the opposite party" (quoting Brumbelow, 251 Ga. at 676-677)); Tidwell v. White, 220 Ga. App. 415, 417 (1996) ("[T]he trial court correctly concluded that the oral settlement agreement as made between the attorneys and memorialized by the [typed] document rendered [propounder's] alleged lack of consent irrelevant to the existence and terms of any such agreement.")

Aninye's absence also does not preclude the Court from enforcing the agreement. In Ballard v. Williams, 223 Ga. App. 1 (1996), appellee Williams's counsel negotiated and agreed to a settlement but, when the settlement paperwork was finalized, the attorneys, as in this case, "had an enormous amount of difficulty in contacting" Williams. Id. at 2. Williams' counsel later explained that when he finally reached his client, Williams agreed to execute the paperwork, but never did. Id. The Court of Appeals reversed the trial court's judgment and enforced the settlement, explaining that "the parties' failure to follow through with the agreement [does not] negate the existence of the agreement or render it unenforceable." Id. (quoting Commercial Union Ins. Co. v. Marco Transp. Co., 211 Ga. App. 844, 845 (1994)).

Williams agreed to the settlement and the fact that he "later had a change of heart is irrelevant to whether" his attorney had authority to settle the case. Ballard, 223 Ga. App. at 2.

After the negotiations concluded, Aninye "agreed to execute the paperwork, but never did," instead attempting to reopen the negotiations to excise from the settlement a document to which he had previously consented. Compare Ballard, 223 Ga. App. at 2. But, as in Ballard, "the parties' failure to follow through with the agreement [does not] negate the existence of the agreement or render it unenforceable." Id. (quoting Commercial Union Ins. Co., 211 Ga. App. at 845).

The facts set forth above show that counsel for DLC and Aninye exchanged settlement offers in letters that "expressed in language sufficiently plain and explicit . . . what the parties agreed upon." See DeRossett Enters., Inc., 275 Ga. App. at 729. Kaye, Aninye's counsel, then confirmed, via e-mail, the details of "various documents the parties agreed to execute under the settlement." See Mason, 174 Ga. App. at 463. Finally, the parties drafted documents that are "clear and unambiguous," and contain all of the details of the settlement. See Stevens, 198 Ga. App. at 413.

For these reasons, the Court find that there was a settlement agreement and that Aninye is bound to that agreement. Defendant Aninye cannot avoid the settlement negotiated over approximately nine months by simply refusing to sign the documents. His attorney agreed to the terms and DLC relied upon his authority in doing so. There is no justification now for Aninye to be relieved of the obligations to which his counsel agreed. Accordingly, the Court grants DLC's Motion to Enforce.

III. CONCLUSION

Having considered Plaintiff Davis Lee Companies, LLC's Motion to Enforce the Settlement Between Davis Lee Companies, LLC and Steven N. Aninye, all related submissions, and the arguments and evidence presented at the hearing, the Court hereby **GRANTS** the Motion. The Court hereby **ORDERS** the parties to execute the agreed upon settlement and all related documents.

The Court also **GRANTS** Defense Counsel's Motion to Withdraw. Defense Counsel are hereby **WITHDRAWN** as counsel of record for the Defendant in the above-referenced action as of the date of this Order. Any further notice or service in this action on Defendant Steven N. Aninye shall be made to the referenced party at 305 East Smoketree Terrace, Alpharetta, Georgia 30005.

This 5th day of March, 2014.

Honorable Alice Bonner, Judge
Superior Court of Fulton County

PRESENTED BY:
NELSON MULLINS RILEY & SCARBOROUGH, LLP
(*with modifications by the Court*)

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